

**UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS**

In re:	)	MDL No. 1456
	)	Civil Action No. 01-12257-PBS
PHARMACEUTICAL INDUSTRY	)	
AVERAGE WHOLESALE PRICE	)	Hon. Patti B. Saris
LITIGATION	)	
	)	
	)	
	)	
<b>THIS DOCUMENT RELATES TO:</b>	)	
	)	
<i>United States ex rel Ven-A-Care of the</i>	)	
<i>Florida Keys, Inc. v. Schering Corporation,</i>	)	
<i>Schering-Plough Corporation and</i>	)	
<i>Warrick Pharmaceuticals Corporation</i>	)	
	)	
Civil Action No. 00-10698	)	

**JOINT MOTION TO EXTEND TIME TO RESPOND TO  
RELATOR'S AMENDED COMPLAINT**

Defendants Schering Corporation, Schering-Plough Corporation and Warrick Pharmaceuticals Corporation, and Relator Ven-A-Care of the Florida Keys, Inc. hereby respectfully move the Court for an order extending the time within which Defendants may respond to Relator's Amended Complaint in the above captioned action (the "Massachusetts Ven-A-Care Action") to and including April 30, 2009. As reasons therefor, the parties state that:

1. Defendants are currently due to respond to the Amended Complaint in the Massachusetts Ven-A-Care Action by March 31, 2009.
2. A second False Claims Act action involving the same parties and alleging that defendants submitted false AWPs for certain albuterol products, *United States ex rel Ven-A-Care of the Florida Keys, Inc. v. Schering Corporation et al.*, CA Nos. 95-1354; 09-10003, was recently unsealed in the United States District Court for the Southern District of Florida (the

“Florida Ven-A-Care Action”). Defendants filed a Notice of Potential Tag-A-Long Action with the Judicial Panel on Multidistrict Litigation on February 10, 2009 to seek transfer of the Florida Ven-A-Care Action to this Court. The Notice of Potential Tag-A-Long Action referred to the severed *United States ex rel Ven-A-Care of the Florida Keys, Inc. v. Schering Corporation et al.*, CA No. 09-10003 and the root case which is currently under seal, *United States ex rel Ven-A-Care of the Florida Keys, Inc. v. Bristol-Myers Squibb Co., et al.*, CA No. 95-1354.

3. The JPML issued a Conditional Transfer Order (“CTO”) to transfer both cases on February 13, 2009. DOJ objected to the CTO and filed a Motion to Vacate the CTO on March 16, 2009. Although DOJ does not object to transfer of the severed and unsealed portion of the Action that resides in the U.S. District Court for the Southern District of Florida under a 2009 docket number, DOJ does object to the transfer of the root case that remains under seal in Florida under a 1995 docket number. Briefing on this issue will be complete on April 13, 2009.

3. Furthermore, Relator and Defendants are currently engaged in settlement discussions.

4. In light of the status of ongoing settlement discussions, and the litigation with DOJ before the JPML that has delayed transfer of the Florida Ven-A-Care Action to the District of Massachusetts, Defendants and Relator believe it would be prudent to extend the time within which Defendants may respond to the Amended Complaint.

WHEREFORE, the Defendants and Ven-A-Care respectfully request that the Court grant this motion and issue an Order, substantially in the form attached hereto, providing that the Defendants' time to answer or otherwise respond to Relator's Amended Complaint shall be extended to and including April 30, 2009.

Dated: March 27, 2009

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#### **CERTIFICATE OF SERVICE**

I hereby certify that on March 27, 2009, a true copy of the above Joint Stipulation was served on all counsel of record by electronic service pursuant to Case Management Order No. 2 entered by the Honorable Patti B. Saris in MDL 1456.

March 27, 2009

/s/ Kirsten V. Mayer  
Kirsten V. Mayer